IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PARTITION OF THE LANDS AND TENEMENTS OF JOHN JOSEPH SKRZEC, SR., AND LAURIE ANN EASTBURN	)	
JOHN JOSEPH SKRZEC, SR.,	)	C.M. No. 12130-NC
PETITIONER,	)	
v.	)	
LAURIE ANN EASTBURN,	)	
RESPONDENT.	)	

MASTER'S REPORT

Date Submitted: July 17, 2008
Draft Report: June 10, 2009
Final Report: June 30, 2010

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AYVAZIAN, Master

This is an action for partition of a property identified as 29 Robert Road, New Castle, Delaware 19720, tax parcel number 10-029.20-019, owned by Petitioner John Joseph Skrzec, Sr. and Respondent Laurie A. Eastburn as tenants in common. Eastburn objects to partition, and alleges that the quitclaim deed transferring an interest in the property to Skrzec was intended only as security for a loan, and should be declared void due to Skrzec's fraudulent conduct. After a trial was held, I issued a draft report in which I concluded that: (1) the quitclaim deed was valid despite its lack of description of the property being conveyed; and (2) Eastburn has failed to demonstrate by clear and convincing evidence that the deed was the product of fraud. Eastburn took exceptions to my draft report on those two issues. This is my final report after briefs were submitted on the exceptions.

Procedural History

On July 14, 2005, Skzrec filed a Petition for Partition pursuant to 25 Del. C. § 721 *et seq*., seeking an order of sale in partition of the property he and Eastburn own as tenants in common pursuant to a quitclaim deed recorded on June 2, 2003, in the Office of the Recorder of Deeds in New Castle County.[1] In her Answer filed on November 11, 2005, Eastburn

[1] The deed recites Eastburn as the grantor and "John Joseph Skrzec Sr., Laurie A. Eastburn" as the grantee. Joint Trial Exhibit 1. Joint tenancies are not favored in Delaware, *see Short v. Milby*, 64 A.2d 36 (Del. Ch. 1949), and since there is no language here expressly conveying joint ownership, a tenancy in common was created. *See* 25 Del. C. § 701. Absent evidence to the

denied that the purported quitclaim deed was valid and, in a counterclaim, alleged that the deed was obtained by fraud after Skrzec had advanced Eastburn approximately $11,000 to pay for the mortgage and other expenses of the property. A trial, originally scheduled to take place on December 4, 2006, was continued at Eastburn's request for medical reasons. On April 17, 2007, Eastburn moved for summary judgment based upon certain undisputed facts elicited during discovery. After briefing was submitted, on December 31, 2007, I issued a report denying the motion for summary judgment because, looking at the record in a light most favorable to Skrzec, I found a question of fact existed whether Skrzec's mortgage payments were consideration for an undivided one-half interest in the property or merely a loan to avoid foreclosure. I also stayed the period for taking exceptions to my report until a decision on the merits could be rendered after trial.

The Factual Background

Skrzec and Eastburn met through a mutual friend in August 2002, and quickly became romantically involved. Eastburn was a divorced woman in her mid-thirties when she first met Skrzec, and she lived in a house that she had inherited from her father in 1991. She was a high school graduate who

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contrary, tenants in common are presumed to hold equal interests in the property. *In re Real Estate of Jamie's L.L.C.*, 2006 WL 644473, at *4 n.27 (Del. Ch. Mar. 1, 2006) (citing *Speed v. Palmer*, 2000 WL 1800247, at *5 n.5 (Del. Ch. June 30, 2000) (citing *Pagliaro, Inc. v. Zimbo*, 1987 WL 10275, at *3 (Del. Super. Apr. 16, 1987)).

had completed one year of college education, and had worked for 17 years as a loan officer. In 2000, Eastburn lost her job and, after surgery on both hands, she applied for disability. Her disability claim was still pending when the couple met and started dating in 2002. By that time, Eastburn had depleted her savings and her only income was $123 per month in general public assistance. Eastburn's primary support at that time was her mother, who paid Eastburn's mortgage loans and other bills.

Skrzec was a divorced father of three children who had an 11th grade education. When he first met Eastburn in 2002, Skrzec was working 80 to 90 hours per week as a lot attendant at a car dealership, and in his own business installing carpet and vinyl. Skrzec owned a house at 112 Delaware Drive in New Castle that he and his ex-wife had agreed would be kept for their children.

In September 2002, Skrzec moved into Eastburn's home at 29 Robert Road.[2] In November 2002, the couple became engaged, and Skrzec purchased a ring for Eastburn. On May 16, 2003, Eastburn signed a quitclaim deed that transferred her interest in the property to Skrzec and herself for the recited consideration of $85,000.[3] Eastburn filed the deed in

[2] While he lived with Eastburn, Skrzec rented 112 Delaware Drive to relatives.
[3] Skrzec never paid Eastburn $85,000 as consideration for his interest in the property. Eastburn testified that when she prepared the quitclaim deed, she used that amount because it was the appraised value of the property when she had last refinanced it in 1995. At trial, Eastburn

the Office of the Recorder of Deeds for New Castle County on June 2, 2003. On the day the deed was recorded, Skrzec wrote two checks totaling $10,911.41 on his account to bring current Eastburn's loan from Washington Mutual that was secured by a first mortgage on the property, and to pay off Eastburn's second loan from PNC Bank. Skrzec also added his name to Eastburn's loan from Washington Mutual, assuming liability for future mortgage payments on the property. The couple lived together at 29 Robert Road for another 18 months, and during part of that time Skrzec's son Anthony lived with them. From June 2003 until January 2005, Skrzec paid the majority of the household expenses, including the monthly mortgage payments to Washington Mutual. Skrzec also purchased and installed an above-ground pool for the property, and spent several thousand dollars on home improvements to 29 Robert Road.

In December 2004, Eastburn received a lump-sum disability payment and, in January 2005, she started receiving monthly disability payments. In January 2005, Skrzec was removed from the property by police. In May 2005, Eastburn obtained a temporary *ex parte* order of protection from abuse from Family Court, and in June 2005, a consent order was entered without a

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testified that she did not know what the property was worth in June 2003, but in her 2006 deposition, Eastburn had estimated that the property was worth $93,000 or $94,000 in May 2003.

finding of abuse.[4] Pursuant to the consent order, Eastburn was given exclusive use and possession of 29 Robert Road for one year, and temporary possession of the couple's dog. In July 2005, Skrzec filed the petition for partition.

At trial, I heard testimony from the parties, as well as testimony from Skrzec's ex-wife and son, Eastburn's mother, and the contractor who had made some of the improvements to the property. Much of the evidence was undisputed. The only significant area of disagreement concerned the circumstances of the property transfer.

The property at 29 Robert Road has been Eastburn's home for all but six years of her life. When Eastburn inherited the property in 1991, she had assumed her father's mortgage. She subsequently refinanced the property twice, the last time being in 1995. In 2002, her monthly payments consisted of approximately $730 on a loan from Washington Mutual that was secured by a first mortgage, and $175 on a home equity loan from PNC Bank that was secured by a second mortgage on the property.[5] Her utility and other bills came to about $500 per month, for a total of approximately $1400 per month in household expenses during 2002. Skrzec gave Eastburn a little money and paid some of the household expenses as soon as he moved into

[4] Joint Trial Exhibit 7
[5] Eastburn had obtained a $10,000 home equity loan in the 1990s.

29 Robert Road in September 2002. Skrzec also gave Eastburn the use of his credit card and his checking account to pay their household expenses. One monthly mortgage payment to PNC Bank was made on Skrzec's checking account in October 2002.[6] During this time, Eastburn's mother also continued to provide financial assistance to her daughter; in fact, the mother paid all but one of the mortgage payments that were made in 2002.[7]

Toward the end of 2002, Eastburn's two mortgages were no longer being paid regularly by her mother, and the mortgages fell into arrears.[8] In February 2003, Eastburn's mother wrote a check to Washington Mutual for one month's payment. The company returned the check to Eastburn, informing her that it would not accept partial payment on the mortgage arrears.[9] Eastburn also received a letter from PNC Bank dated May 1, 2003, stating that her home equity loan was being referred to the bank's Foreclosure Department.[10]

Eastburn testified that she was not afraid of foreclosure because she was going to sell the house. Selling the house was Skrzec's idea, according

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[6] Joint Trial Exhibit 6.
[7] Joint Trial Exhibit 5.
[8] The record shows that Eastburn's mother made seven monthly payments to PNC Bank and eight monthly payments to Washington Mutual during 2002. Joint Trial Exhibit 5.
[9] By February 2003, Eastburn was six or seven months behind in her payments to Washington Mutual. Joint Trial Exhibit 4. In August 2002, the principal balance of the Washington Mutual loan was $73,766.06. *Id.*
[10] Joint Trial Exhibit 3. A letter dated May 21, 2003 from PNC Bank indicated that Eastburn's loan was 35 days delinquent in the amount of $305.24, and her current balance was $4,055.19. *Id.*

to Eastburn, and on May 19, 2003, Eastburn signed a listing agreement to sell the property at a price of $112,900.[11] She testified that if Skrzec had not paid the money for the two mortgages, she would have sold the house and purchased another home somewhere else. She testified that Skrzec had wanted her to buy a house near his home on Delaware Drive. However, Eastburn did not receive any offers for the property, and she took it off the market about a month after she had signed the listing agreement.

According to Eastburn's testimony, she and Skrzec never discussed the possibility of his bringing current or paying off her mortgages. Eastburn testified that the first time she heard of this idea was when Skrzec was talking on the phone to her mother. Eastburn overheard Skrzec tell her mother that he was going to "loan" Eastburn the money to bring up to date her first mortgage and to pay off her second mortgage. Eastburn testified that Skrzec had insisted that she put his name on her loan and deed as "collateral," or else she would not receive any money from him. He also had informed her that he was not going to pay one mortgage payment until he received a copy of the new deed and a loan statement showing his name on it. According to Eastburn, the couple had a verbal agreement that she would repay Skrzec when she received her disability money, at which time

[11] Joint Trial Exhibit 11.

his name would be removed from the title. Eastburn testified that as soon as she received her lump-sum payment in December 2004, she offered Skrzec $13,000 to repay the loan, but he had demanded $17,000.[12] When she agreed to pay the larger amount, Skrzec changed his mind and demanded half of the property.

Skrzec denied that the money was a loan. Skrzec testified that he and Eastburn were in love and engaged to be married. He knew that if the mortgage arrears were not paid in full, Washington Mutual would foreclose on the property so he offered to bring her primary mortgage up to date. Skrzec testified that when he offered to pay the mortgage arrears, Washington Mutual insisted that Eastburn add his name to the deed. It had been his decision, however, to put his name on the loan because if his name was on the deed, then he was also going to be responsible for the mortgage. At Skrzec's request, therefore, his name was added to the Washington Mutual loan.[13] Skrzec also decided to pay off the second mortgage with PNC Bank to avoid the possibility of foreclosure.

Skrzec testified that he was in love with Eastburn and, after they became engaged, he paid most of the bills. He expected that Eastburn would

[12] Eastburn had the property appraised several months after Skrzec was removed from the property. The property had an appraised value of $130,000 as of September 26, 2005. Joint Trial Exhibit 12.
[13] Joint Trial Exhibit 4.

cook dinner, wash laundry, and clean the house while he worked, and that once she received her disability payments, Eastburn would pay half of the mortgage and he would not have to work as many hours as he was then working. Skrzec testified that he and Eastburn had talked about "our house," and that he viewed the property as their property because they were going to be together. Skrzec testified that he never considered the money he had paid on the mortgages or home improvements as loans to be repaid by Eastburn.

The evidence was undisputed that on May 16, 2003, Eastburn filled out the quitclaim deed form that had been purchased at a store. It took some time for her to find a notary, and she subsequently filed the notarized deed in the Office of the Recorder of Deeds in New Castle County on June 2, 2003.[14] On June 2, 2003, Skrzec wrote a check payable to Washington Mutual for $6,856.22, which brought Eastburn's loan up to date.[15] He also wrote another check for $4,055.19 payable to PNC Bank in order to pay off Eastburn's home equity loan.[16] On the same day, Skrzec wrote two more checks, each in the amount of $450, to pay the State and county transfer taxes.[17]

[14] Joint Trial Exhibit 1.
[15] Joint Trial Exhibit 2.
[16] Joint Trial Exhibit 2.
[17] Joint Trial Exhibit 6.

Eastburn testified that she wanted to have an attorney involved, someone who was her friend,[18] but Skrzec did not want to pay any more money for an attorney. The couple never discussed how to title the property or what would happen if they ended their relationship. Eastburn's mother testified that she had tried to dissuade her daughter from putting Skrzec's name on the deed, to no avail. The mother thought it might be a problem if the couple did not get married.

During the summer of 2003 or 2004, Anthony Skrzec lived with his father and Eastburn at 29 Robert Road. Skrzec paid Anthony and a friend approximately $400 to paint the house and the garage. Skrzec and Anthony cleaned up the garage and built an attic loft in the garage for storage. About the same time, Skrzec paid Jeffrey Marsh, an unlicensed contractor, several thousand dollars to remove the old windows on the house and to install new windows, a sliding glass door, and a front storm door.[19] Skrzec purchased a large above-ground swimming pool for $5800, and paid for a permit and to have it installed.[20] Anthony testified that he and his siblings had wanted the pool installed at their house on Delaware Drive, but his father had said that

[18] Eastburn had hired two attorneys to help her with her disability claim, but it is not clear from the record if Eastburn was referring to one of these lawyers.

[19] The parties dispute how much was paid to the contractor. Skrzec testified that he paid $300 to purchase the sliding glass door, and presented a post-dated "Bill of Sale" between Skrzec and Marsh stating that Skrzec had paid $3,800 for the work on the property. Joint Trial Exhibit 10. Eastburn testified that she saw Skrzec pay Marsh $2500 in cash to have the windows installed, and that she had purchased the storm door.

[20] Joint Trial Exhibit 6.

they would be living at 29 Robert Road so the pool was installed there. Skrzec also provided some used carpeting and furniture for a spare room in the house. Eastburn's mother testified that she believed Skrzec considered the property as his house. Anthony testified that he had heard Eastburn describe the house as "her and John's house." Eastburn denied that she had ever referred to 29 Robert Road as "our house."

Skrzec paid all the monthly mortgage payments to Washington Mutual from July 2003 through 2004.[21] Eastburn's mother provided only minimal financial assistance to her daughter during 2004.[22] Over time, however, the couple's relationship deteriorated. Skrzec described their relationship as "rocky" while Eastburn described it as "abusive." Eastburn's mother testified that as time progressed, Skrzec became controlling and Eastburn was isolated from family and friends. She occasionally feared for her daughter's safety. It was Eastburn's mother who called the police in January 2005, at which time Skrzec was removed from the property.

Legal Issues

[21] The last check Skrzec wrote to Washington Mutual was dated January 4, 2005, in the amount of $431.65. Joint Trial Exhibit 6. Eastburn testified that she paid the mortgage in January 2005, but did not specify the amount of her payment.

[22] The record shows checks on the mother's account totaling $750 that were paid to or on behalf of Eastburn during 2004. Joint Trial Exhibit 5.

A preliminary question was raised *sua sponte* by the court pertaining to the validity of the quitclaim deed which, on its face, lacks a property description. *See Faraone v. Kenyon*, 2004 WL 550745 (Del. Ch. Mar. 15, 2004); 25 Del. C. § 121. In *Faraone*, the Court held that a deed was void as a matter of law because it lacked any description of the property or any other information that would have enabled a reader to identify the property being conveyed. *Id.* at *10. The grantor in that case was an elderly woman suffering from dementia. *Id.* at *5. The quitclaim deed, which lacked both a property description and any recited consideration, had been prepared by the grantor's son, who sought to convey his mother's house to himself. *Id.* After the document was signed, the son took the deed to the Recorder of Deeds, which accepted it for recording only after the grantor's son handwrote the tax identification number on the first page of the deed. *Id.* *See* 9 Del. C. § 9605(f).

Unlike the grantor in *Faraone*, the grantor in this case did not sign a document lacking a property description that had been prepared by someone else. Eastburn prepared her own quitclaim deed, signed it, and then had it notarized and took the deed to the Office of the Recorder of Deeds to have it recorded. [23] Unlike the grantor in *Faraone*, the grantor in this case was not

[23] Trial Transcript at 30-31, 39-40, 62.

an elderly person suffering from dementia, but was a relatively young woman who not only understood the consequences of adding the name of another person to the title of her property,[24] but also had been advised against doing so by her own mother. Eastburn further testified that the original deed did not contain a legal description of the property, and that she was told to write the tax parcel identification number on the quitclaim deed, which she did.[25] It is unclear from the record whether Eastburn wrote down the tax parcel identification number at the time she completed and signed the quitclaim deed or after it had been notarized and presented at the Recorder of Deeds. The timing, however, is immaterial in this case. In *Faraone*, it was the grantee who attempted to cure the deficiency in the property description after the deed had been signed by the grantor. Here, assuming the deed had previously been signed by Eastburn, it was Eastburn herself who cured the deficiency in the property description by handwriting the tax parcel number on the quitclaim deed. There is absolutely no doubt in this case that at the time she signed the quitclaim deed, Eastburn knew the identity of the property that she was conveying to Skrzec and herself. Therefore, I do not find this deed to be void *ab initio*.

[24] Eastburn testified that she had kept the property in her sole name during her brief marriage in the early 1990s. When asked why, Eastburn replied, "Because it's my house. I told [Eastburn's husband] if anything happened, why should I have to buy his half out when it was mine to begin with." Trial Transcript at 128.
[25] Joint Trial Exhibit 1.

Eastburn, nonetheless, seeks to have the quitclaim deed declared equitably void as a product of fraud and misrepresentation. Since Eastburn is seeking to rescind the deed on this ground, she has the burden of proving fraud by clear and convincing evidence. *See Killen v. Purdy*, 99 A. 537, 538 (Del. 1916); *Estate of Dugger*, 2000 WL 1528710 (Del. Ch. Sept. 29, 2000); *Holloway v. Holloway*, 1993 WL 75378 (Del. Ch. Mar. 11, 1993). The elements of fraud consist of "a false representation of a material fact knowingly stated with intent to deceive another who, ignorant of its falsity, relies thereon and is deceived." *Lea v. Griffin*, 1995 WL 106562, at *3 (Del. Ch. Feb. 15, 1995).

Relying on *Ryan v. Weiner*, 610 A.2d 1377 (Del. Ch. 1992), Eastburn contends that where the inadequacy of consideration is very gross, fraud will be presumed. In particular, Eastburn points to *Johnson v. Woodworth*, 119 N.Y.S. 146 (NY Supr., A.D. 1900), a case cited in *Ryan*, where the consideration equaled 25 percent of the value of the property in question. 610 A.2d at 1382. Eastburn claims that the loan amount ($10,911.41) in her case equals approximately 20 to 24 percent of 50 percent of the approximate fair market value of the home at the time, apparently arguing that fraud should be presumed in her case as well.

In *Johnson*, the grantor was a 70-year old widow living on a farm with her son who had executed to her neighbor a warranty deed of the farm for $1.00. 119 N.Y.S. at 147. At the same time the deed was executed, the neighbor executed a bond and mortgage on the farm for $500 in five annual payments of $100 each, without interest, to the widow. *Id.* The widow died soon afterward, leaving the farm to a trustee for the benefit of her son during his lifetime, and the remainder at his death to his children. *Id.* The trustee challenged the warranty deed as intended for money advanced by the neighbor according to the bond and the mortgage, but the complaint was dismissed. *Id.* On appeal, the New York court reversed, and granted a new trial stating:

> In my opinion the evidence was sufficient to put the respondent to his proof. Property …worth $2,000 was transferred to a stranger in blood, and to the exclusion of the grantor's son, with whom she was living, for consideration of less than $500, when it is considered that the payments were to be distributed over a period of five years. An arrangement so unusual and unnatural cannot be lightly regarded, without some explanation on the part of the person claiming the benefit thereon, and not much evidence is necessary to impose on such person the duty of an explanation …. [I]t is said:
>
> "When the inadequacy of consideration is very gross, fraud will be presumed; for though in such case there may be no positive evidence of it, yet when the inequality is so great as to shock the conscience, the mind cannot resist the inference that the bargain must in some way have been improperly obtained. As to what degree of inequality constitutes gross inadequacy, no rule can be laid down. Between the parties, it has been said, 'to set aside a conveyance, there must be an inequality so strong, gross, and manifest that it must be impossible to

> state it to a man of common sense without producing an exclamation at the inequality of it.'" ….
>
> The degree or extent of the inadequacy is to be considered with reference to the relations existing between the parties and the apparent reasons which exist for such inadequacy. A consideration which may not be inadequate as between parties bound by the ties of affection and kinship may be grossly inadequate as between strangers, unless some explanation is vouchsafed.

Id. at 148-149.

Skrzrec was not a stranger; he was the man with whom Eastburn was living, the man whom she had formally engaged herself to marry. Even if their relationship pursued an erratic course,[26] Eastburn nonetheless continued her intimate relationship with Skrzec for another 18 months after the quitclaim deed was recorded. Nor does the consideration in this case appear inadequate. The property in question had been listed for sale in May and June 2003 at a price of $112,900 without attracting any offers. Eastburn herself estimated the property to have been worth approximately $93,000 or $94,000 in May 2003. In August 2002, the balance of the Washington Mutual loan was $73, 766.06.[27] The balance of the PNC Bank loan was $4,055.19 on May 21, 2003.[28] Adjusting the Washington Mutual balance slightly downward for several small principal payments that were made subsequent to August 2002, the combined balance of the loans secured by

[26] Eastburn testified that their engagement was "off and on", that is, Skrzec moved out several times and the ring was exchanged back and forth.
[27] Joint Trial Exhibit 4.
[28] Joint Trial Exhibit 3.

the two mortgages would have been at least $77,000 on June 2, 2003. Using the above figures, Eastburn's equity in the property could have been as low as $16,000 or possibly as high as $36,000. Given the couple's intimate relationship and Eastburn's lack of financial wherewithal, the amount of $11,000 as consideration for an undivided one-half interest in the property does not appear so inadequate as to shock the conscience, and require the court to presume fraud in this case.

Eastburn argues, however, that courts in Delaware apply a fair market value test and where real property is transferred for less than 50% of the property's fair market value, the sales agreement is unconscionable and void, citing *Emery-Watson v. Mantakounis*, 412 B.R. 670 (D. Del. 2009). According to Eastburn, presuming the fair market value of the property was $94,000 at the time the deed was signed, a half-ownership interest was worth $47,000. Thus, Skrzec paid only 23% of the fair market value of the half-ownership interest. In the case cited above by Eastburn, a woman was facing imminent foreclosure and purportedly sold her property to a neighbor for approximately $30,000, which was the cost of paying off her mortgage and other liens on the property. *Id.* at 671. The property was then worth at least $140,000. At the same time, the woman signed an agreement with her neighbor to lease the property for $700 per month. *Id*. at 673. When the

woman failed to make her monthly payments, the neighbor instituted legal proceedings against her for back rent and summary possession. *Id*. The Bankruptcy Court found that the woman had an absence of meaningful choices with regard to saving the property from foreclosure at the time she contracted with the neighbor for its sale. *Id.* at 675. And the Court found the terms of the agreement of sale so one-sided, i.e., the property was worth nearly five times the consideration - as to shock the conscience of the Court. *Id*. As a result, the Court found that rescission of the sales agreement was warranted. *Id.* at 676.

The case before me, however, differs in several respects from the case cited by Eastburn. First, the only mortgage that Skrzec paid off was the second mortgage held by PNC Bank. The property was still encumbered by the Washington Mutual mortgage. Unlike the purchaser in the *Emery-Watson*, who obtained full title to a property that was now free and clear of any liens, Skrzec obtained a half-ownership interest in property that was encumbered by a considerable mortgage, he then assumed liability for that mortgage, and made all of the mortgage payments on the property. As a result, Eastburn was able to remain in the property as a half-owner, supported by Skrzec, who continued to pay the household expenses and

make improvements to the property until he was removed by the police once Eastburn started to receive her disability payments.

Second, Eastburn testified at trial that foreclosure was not an immediate concern, and she could have sold her property instead.[29] Thus, Eastburn was not in the same position as the woman in *Emery-Watson*, i.e., Eastburn was not lacking meaningful choices with regard to saving her property from foreclosure at the time she added Skrzec's name on the title to her property.

Finally, Skrzec was Eastburn's fiancée and was living with Eastburn at the time she executed the quitclaim deed. Skrzec was supporing Eastburn financially, and trusted her to use his credit card and checking account for the household expenses. The "agreement of sale" in *Emery-Watson* that was so one-sided as to shock the conscience of the Bankruptcy Court was executed by two individuals who had no previous relationship other than as neighbors. Eastburn and Skrzec were involved in an ongoing romantic relationship that was intended to culminate in a legal marriage. Their relationship disintegrated, however, before it reached that point.

Given all of these circumstances, I do not find Skrzec's payment of $11,000 for a half-ownership interest in property worth maybe $94,000,

[29] Trial Transcript at 22-25, 32-33, 142.

which was encumbered by a loan whose current balance was approximately $72,000, to be so one-sided as to shock the conscience of this Court and to warrant voiding the quitclaim deed.

The burden of proof therefore falls upon Eastburn to demonstrate fraud with clear and convincing evidence. Although Eastburn contends that Skrzec offered to lend her the money on the condition that she prepare and record a quitclaim deed adding his name to the property, the only evidence of this purported loan is her own self-serving testimony. As stated above, Eastburn testified that she overheard Skrzec tell her mother that he was lending Eastburn the money for her mortgages. Eastburn's testimony was contradicted by her mother, who testified that she did not know whether the money was a loan or a gift, and did not recall being told the nature of the transaction by Skrzec or anyone else. Having observed both witnesses, I find Eastburn's mother to have been the more credible witness. As petitioner's counsel demonstrated at trial, Eastburn had not mentioned any telephone conversation between Skrzec and her mother in Eastburn's March 16, 2006 deposition. Furthermore, when questioned by petitioner's counsel, Eastburn admitted having "reminded" her mother about the telephone conversation during a short recess on the morning of trial in violation of the court's sequestration order.

Not only was Eastburn's testimony regarding the purported loan uncorroborated, it was also inconsistent. When specifically asked what Skrzec had "called" the transaction, Eastburn hesitated in her response and then testified: "He gave it to me as a loan." Her testimony was also vague as to the terms of the alleged verbal agreement with Skrzec. When asked whether the parties had agreed upon any interest for the purported loan, Eastburn simply replied that she offered Skrzec $13,000, that is, the funds she received when her disability claim was resolved. Questioned later by her own counsel, Eastburn explained that this amount included "a little interest" and some money for the improvements Skrzec had made to the house.

Eastburn attempts to portray herself as unsophisticated person who was facing the possibility of losing her home. She argues that Skrzec took advantage of her despair to gain an ownership interest, using the violent nature of their relationship to accomplish his goal. However, this portrayal of Eastburn as the victim is not convincing. First, although there was testimony from Eastburn and her mother that the couple's relationship subsequently became abusive, there was no evidence of any violence between the parties on or before June 2, 2003. When the quitclaim deed was recorded, the couple had been living together for about nine months, and

even Eastburn conceded that the first several months of the relationship were good, if not great. Second, unlike the grantor in *Ryan* who had only a 9th grade education and was facing an imminent foreclosure sale when he transferred ownership of his property to a licensed real estate broker, 610 A.2d at 1382, Eastburn was more sophisticated than Skrzec both in terms of the level of her formal education and her profession as a loan officer. She understood the consequences of transferring legal title to property, as demonstrated by her refusal to transfer any interest in the property to her then-husband during an earlier marriage. Eastburn had also engaged lawyers in pursuing her disability claim. If Skrzec had refused to pay money for a lawyer, as Eastburn testified, she never explained why she did not try to hire a lawyer on her own behalf.

Eastburn was not facing an imminent foreclosure sale, and at trial she consistently denied that she was afraid of foreclosure. She did not have to execute a quitclaim deed conveying part of her interest in the property to another. She could have simply put the house back on the market at the same or lower price and sold it. Finally, unlike the grantor in *Ryan* who received no part of the financial value of the property when he transferred ownership, Eastburn retained half of the financial value of the property when she conveyed her interest in the property to herself and Skrzec.

Although Skrzec testified his name was put on the deed at Washington Mutual's insistence, a scenario that is similar to the factual circumstances in *Emery-Watson*, 412 B.R. at 671, it is undisputed that the transfer was done by Eastburn and, thereafter, Skrzec acted and held himself out as an owner of the property. Skrzec not only rendered himself liable for the Washington Mutual loan and made all the subsequent monthly mortgage payments until he was removed from the property, he also made considerable improvements to the property – improvements that Eastburn willingly accepted at the time. In short, after the quitclaim deed was recorded, the couple behaved as though Skrzec had legal and equitable title to the property, and not as though Skrzec was merely someone who had lent Eastburn money.

Conclusion

Eastburn executed and recorded a quitclaim deed conveying her interest in 29 Robert Road to Skrzec and herself at a time when her mortgage payments were in considerable arrears. Skrzec paid $10,911.41 to bring Eastburn's Washington Mutual loan up to date and to pay off her PNC Bank loan. In the absence of clear and convincing evidence of fraud, the quitclaim deed must stand. Therefore, Eastburn lacks any defense against the partition action brought by Skrzec pursuant to 25 Del. C. § 721. When

this report becomes final, the parties shall confer and submit an appropriate form of order.